

120

(1)

Supreme Court, U.S.
FILED

No. _____ 081294 APR 14 2009

OFFICE OF THE CLERK
In The
Supreme Court of the United States

HERMAN ASTER, Petitioner,

vs.

ZDENKA ASTER, *Respondent.*

On Petition For Writ Of Certiorari
To The Court Of Appeal
For The State Of California Sixth Appellate District.

PETITION FOR WRIT OF CERTIORARI

The Petitioner
HERMAN ASTER,
2167 Riordan Drive
San Jose, California, 95130
Telephone (408) 378-1457

QUESTION PRESENTED FOR REVIEW

In question is denial of Petition for Writ of Supersedeas and the Request for Stay.

THE PARTIES ARE

Petitioner Herman Aster

Respondent Zdenka Aster represented by
attorney Dolly Ares, BN 87786,
514 Monterey Street, Hollister, CA 95023.
Phone: 831-637-6775, Fax 831-637-6779
and attorney Lino V. Martire, BN 169639,
60 South Market Street, San Jose, CA 95113.

Supreme Court of California
350 McAllister Street, San Francisco, CA 94102

Court of Appeal
333 West Santa Clara Street, San Jose, CA 95113

Superior Court, Family Division
170 Park Center Plaza, San Jose, CA 95113

CITATIONS OF ORDERS AND OPINIONS

	Date	App. Page
Denials, orders and opinions filed in the case:		
1-99-FL086124 in Superior Court, Judgment of Dissolution	01/09/2001	1
H032641 in Court of Appeals, Petition for Writ denied	12/30/2008	6
S169535 in Supreme Court of California Petition for Review denied	02/18/200	7
S170496 in Supreme Court of California Petition for Review denied	03/25/2009	8

STATEMENT ON BASIS FOR JURISDICTION

In Court of Appeal
Denial of Petition for Writ has been entered December,
30, 2008 as final order.

In Supreme Court of California
Petition for Review denied February 18, 2009

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Constitution of the United States Amendment V:
No person shall be ... deprived of ...property without
due process of law

STATEMENT OF THE CASE

This appeal is in defense of petitioner's right to keep his part of assets awarded to him in Judgment of Dissolution filed January 9, 2001. (Appendix page 1) The last salient steps are as follows:

The Petition for Writ of Supersedeas Stay Requested (Appendix page 9), alleging in Memorandum violation of Judgment of Dissolution on two counts, is denied by Court of Appeal December 30, 2008 (Appendix page 6) as final order **without issuance of any opinion.**

The Supreme Court of California denied Petition for Review February 18, 2009. (Appendix page 7)

Santa Clara County Sheriff proceeds with sale of petitioner's home (Appendix page 10) even before expiry of time for this petition to be filed.

REASONS FOR GRANTING THE PETITION

The reason for granting this petition is to stop evident violation of due process of law as granted in constitutional Amendment V and specifically, stop confiscation of petitioner's assets before the division mandated in Judgment of Dissolution, is resolved.

Separate appeal to this court from denied Petition for Review in case S170496 (Appendix page 8) dealing with Judgment of Dissolution (18) Premarital Contract and other is being perfected.

IN CONCLUSION

The 74 years old petitioner being driven out of his home and facing confiscation of all of his assets begs the Court to appreciate the urgency of this petition.

In ten years of litigation the Appellate court departed from accepted and usual course of judicial proceedings **and** sanctioned such a departure by Superior Court as to call for an exercise of this Court's Supervisory power.

Respectfully submitted,

In San Jose April 12, 2009

Herman Aster

JUDGMENT OF DISSOLUTION

Trial Court:	Superior Court of California Santa Clara County, Dpt. 75
Case:	1-99-FL086124
Trial Judge:	Honorable Jamie Jacobs-May
Filled:	January 9, 2001

Marriage of Aster, Case No. 1-99-FL086124

1. Both parties waive their right to receive spousal support, and the Court's jurisdiction to award support to either party is hereby terminated.

2. Each party shall pay his or her own attorney fees and costs through date of trial.

3. Respondent shall reimburse Petitioner for one-half of sum of \$475.00, representing the appraisal fee of Gene Hubbard.

4. The IRA/AARP account in Respondent's name in the approximate amount of \$62,515 is awarded to Respondent as his sole and separate property.

5. The IRA/AARP account in Petitioner's name in the approximate amount of \$62,521 is awarded to Petitioner as her sole and separate property.

6. Elizabeth Strassen shall be retained by the parties to prepare Qualified Domestic Relation Orders (QDROs) on the following accounts and each party shall pay one-half of the cost thereof:

a. 401K account with Franklin in Respondent's name in the approximate amount of \$134,877.

- b. 401K account with UBS in Respondent's name in approximate amount of \$92,604.
- c. 401K account with Putnam in Petitioner's name. The amount at the date of separation with accrued interest shall be divided and Petitioner shall be awarded her separate property interest representing any contributions plus interest made since date of separation to the date of division.

7. The real property located at 2167 Riordan Drive, San Jose, California shall be awarded to Respondent as his sole and separate property. Respondent shall pay to Petitioner one-half of the sum of \$467,000, which is the agreed upon value of the property.

8. Rental Value: Respondent shall pay to Petitioner the sum of \$11,450, representing one-half of the rental value of real property since date of separation to the date of trial.

9. The Respondent presented evidence regarding two annuities consisting of Zurich Life Insurance Company policy nos. 7,262.019 and 7,299.583. Respondent presented evidence to support his position that the value of the annuities was significant and almost equal to the value of the death benefit. After testimony, the Court made the following tentative ruling: The annuities are community property. The Court disagrees with the evidence presented by the Respondent and makes the following tentative ruling: The annuities shall be cashed in or the parties shall share the annuity benefits on an ongoing basis. If the Petitioner dies, the Respondent is entitled to full amount of the benefits. If the respondent dies, the Petitioner is entitled to full amount of the benefits. After the tentative ruling, the Respondent indicated to the Court that he wished to keep both annuities and that he would pay Petitioner her interest in the annuities. ~~The parties then entered into the following stipulation on record:~~ H.A.

Respondent is awarded any and all benefits from said annuities during his lifetime. Said annuities are in Respondent's name and Respondent shall not change any of the terms of said policies including, but not limited to, the death benefit portion of the

policies. Respondent shall pay to Petitioner as and for her interest in said policies the sum of \$172,500.

10. Bank accounts:

- a. The Wells Fargo checking account No. 0572-202397 in approximate amount of \$18,887, as well as First Albany Bank account No. 1237-0141 in approximate amount of \$30,771 shall be divided equally between the parties.
- b. The Downey Bank account no. 3996013300 and Citibank account no. 40008550531 have been previously divided between the parties.
- c. The Valley Credit Union account no. 0000026968 in the amount of \$628.25 shall be equally divided between the parties.

11. Security Accounts: The following security accounts shall be divided in kind between the parties:

- a. BP/PB account, consisting of 3,000 shares, approximate value: \$43,687.
- b. Bristol Myers account Consisting of 1600 shares, approximate value of \$85,800
- c. IBM account no. 88550 and 90115 consisting of 1,608 shares, approximate value \$201,402.
- d. Exxon Mobil account consisting of 400 shares, approximate value \$35,850.
- e. Phillip Morris account consisting of 1,800 shares, approximate value \$48,037.
- f. Paine Webber account, consisting of 3200 shares of HB and 3200 shares of PSCO, with an approximate value of \$145,453.

12. Swiss accounts: Petitioner presented evidence regarding Swiss accounts consisting of investment accounts PO280671.0, PO280671.1, as well as an investment account. Petitioner alleged that on June 25, approximately one

month prior separation, the investment account contained net asset of 136631 Swiss francs. Approximately one month after separation, the investment account was depleted. Respondent alleged that said funds had been used to purchase the second annuity or that he had no knowledge of what happened to the funds. The Court found that Petitioner had the burden of proving misappropriation of the funds by the Respondent and that Petitioner failed to carry her burden of proof. The Court did not preclude any remedies under Family Code Section 2120 et seq. which might be available to Petitioner subject to the statute of limitations therein.

13. The IBM pension is awarded to Respondent as his sole and separate property.

14. The parties agree that there was a South Africa checking account No. 001513753 and Escom bond R200,000. The parties entered into a Stipulation as follows: Respondent set value of said account in the amount of \$5,000. Petitioner agreed to pay to Respondent the sum of \$5,000, representing any and all interest that Respondent may have in the South Africa investment account. The South African account of R200,000 shall be awarded to Petitioner as her sole and separate property. Respondent shall do everything necessary to transfer said account to Petitioner's name.

15. The parties had an investment consisting of 100 gold Kruggerands. Respondent shall deliver to Petitioner one-half of said Kruggerands.

16. Petitioner is awarded the 1993 Honda Civic at the agreed upon value of \$4,000; Respondent is awarded the 1987 Honda Civic at agreed upon value of \$500.00.

17. House hold Furniture & Furnishings: Respondent agreed to return to Petitioner the following: Main bedroom: one picture by the door and one alarm clock; Zdenka's room: Sewing machine

and pictures which were wife's separate property; Sunroom: one-half of ornamental plates; Living room: One floor lamp, one wall clock from Africa, two pictures above couch, three ornamental plates, one-half of African and Czech ornaments, books and dictionaries, one-half of the audio and video tapes; Dining room: one picture above cabinet, four pieces of crystal; Kitchen: one clock radio, in house grille.

The parties have divided the family photo albums and Respondent has returned to Petitioner the family tree book. Respondent shall pay to Petitioner the sum of \$1,000 as an agreed upon amount. All other household furniture and furnishing are awarded to Respondent as his sole and separate property.

18. Premarital Contract: Respondent presented evidence to the Court regarding an alleged premarital contract which he alleged was breached by the Petitioner and that he was therefore entitled to damages. Petitioner alleged that there was no premarital contract and that the alleged contract was in fact an agreement with the Catholic Church. After evidence was submitted, the Court ruled that the Respondent had no right to money damages for breach of the marriage contract.

19. IBM stock: Respondent alleged that IBM stock accounts 88550 and 90115 were his separate property. After evidence was presented, the Court ruled that said accounts were quasi-community property and were to be divided equally.

20. The equalizing payment payable by Respondent to Petitioner is payable forthwith and earns interest at the legal rate 10% as of date of trial, October 4, 2000.

DATED: 12/11/00

"s/ Justice May"

JUDGE OF THE SUPERIOR COURT

Marriage of Aster

Judgment of dissolution

**IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA SIXTH APPELLATE DISTRICT**

Court of Appeal No. H032641
Superior Court No 199-FL086124.

In re Marriage of ZDENKA AND HERMAN ASTER

ZDENKA ASTER, Respondent,
v.
HERMAN ASTER, Appellant

BY THE COURT:

Petition for writ of supersedeas and request for stay are
denied.

(Rushing, P.J., Premo, J., and Elia, J., participated in
this decision)

Dated Dec 30 2008

Rushing, P. J.

Court of Appeal
FILED
DEC 30 2008
Michael J. Yerly
Clerk - Deputy

App. 7

Court of Appeal, Sixth Appellate District No. H032641
S169535

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re Marriage of ZDENKA AND HERMAN ASTER

ZDENKA ASTER, Respondent,

v.

HERMAN ASTER, Appellant

Petition for review DENIED.

George, C.J., was absent and did not participate.

CORRIGAN

Acting Chief Justice

Supreme Court

FILED

FEB 18 2009

Frederick K. Ohlrich

Clerk - Deputy

App. 8

Court of Appeal, Sixth Appellate District No.

H032641

S170496

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re Marriage of ZDENKA AND HERMAN
ASTER

ZDENKA ASTER, Respondent,

v.

HERMAN ASTER, Appellant

Petition for review DENIED.

GEORGE

Chief Justice

Supreme Court

FILED

MAR 25 2009

Frederick K. Ohlrich

Clerk - Deputy

HERMAN ASTER
2167 RIORDAN DRIVE
SAN JOSE, CA 95130
Phone: (408) 378-1457
Appellant, pro se

IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA SIXTH APPELLATE DISTRICT

Appellate No. H032641
St. Clara No. 1-99-FL086124

ZDENKA ASTER,
Respondent,

HERMAN ASTER,
Appellant.

PETITION FOR WRIT OF SUPERSEDEAS
STAY REQUESTED

The Appellant begs the Honorable Court of
Appeal for Writ of Supersedeas to rescind orders listed
in memorandum and declare Stay on actions in Superior
Court.

MEMORANDUM

In Findings and Order After Hearing December 8,
2008 (Exhibit A) the respondent proceeds to confiscate
my half of BP Prudhoe Bay Securities in violation of
Judgment of Dissolution (11)(a).

App. 10

In Findings and Order After Hearing December 11, 2008 (Exhibit B) the respondent proceeds to sell the real property in violation of Judgment of Dissolution (7) and extorts \$17,500 of attorney's fees.

I declare under penalty of perjury that the foregoing facts are true.

Executed at San Jose, California on December 14, 2008.

"s/ Herman Aster"

**SANTA CLARA COUNTY
SHERIFF'S DEPARTMENT**

**SHERIFF'S SALE
(701.540CCP)**

**SHERIFF'S CIVIL FILE NO. 08-771152
COURT CASE NO. 1-99-FL086124**

UNDER A WRIT OF SALE issued out of the Superior Court, Santa Clara Judicial District, County of Santa Clara, State of California, February 15, 2008 on a judgment rendered April 20, 2004 and renewed November 14, 2007.

**IN FAVOR OF: Zdenka Aster
AND AGAINST: Herman Aster**

**for the sum of \$788,407.18 Dollars; - PLUS COST AND
INTEREST**

**I HAVE LEVIED upon all the right, title, claim and
interest of debtor(s) Herman Aster, in the real property,
in the County of Santa Clara, described as follows:**

REAL PROPERTY COMMONLY KNOWN AS:

2167 Riordan Drive

San Jose, Ca

APN #403-030012

(see attached legal description)

**“ Prospective bidders should refer to Section 701.510 to
701.680, inclusive, of Code of Civil Procedure for
provisions governing the terms, condition, s, and effect
of the sale and liability of defaulting bidders.” (CCP
701.547)**

MINIMUM BID: \$621,000.00

(pursuant to CCP 704.800(b))

**PUBLIC NOTICE IS HEREBY GIVEN that I will
proceed to sell at public auction to the highest bidder for
cash of lawful money of the United States all the right,
title, claim and interest of debtor(s) in the above
described property or so much as will be sufficient to
satisfy said Writ or Warrant with interest and all cost
on: May 5, 2009 at 11:00 o'clock A.M., at the following
location **Front entrance to the Sheriff's Office, 55 W.
Younger Avenue, San Jose, CA. 95110-1722****

Laurie R Smith

Sheriff of Santa Clara County

By: “s/ Albert W. Doty”

#1353 Deputy

Attorney for Creditor: Lino V. Martire

Dated: March 11, 2009